

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

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CLEAR CHOICE ENTERPRISES, INC.,

Plaintiff,

ADOPTION ORDER
14-cv-3372 (ADS)(SIL)

-against-

CELLEBRITE USA, INC.,

Defendant.

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APPEARANCES:

Nesenoff & Miltenberg, LLP

Attorneys for the Plaintiff

363 Seventh Avenue, 5th Floor

New York, NY 10001

By: Andrew T. Miltenberg, Esq.

Philip A. Byler, Esq., Of Counsel

NO APPEARANCE:

The Defendant

SPATT, District Judge.

On May 30, 2014, the Plaintiff Clear Choice Enterprises, Inc. (the “Plaintiff”) commenced this action against the Defendant Cellegrite USA, Inc. (the “Defendant”) for breach of a Letter Agreement dated October 3, 2011. Under the Letter Agreement, the Defendant was obligated to pay the Plaintiff an 11% commission in connection with sales of Cellegrite Touch Devises to RadioShack.

On September 9, 2014, the Clerk of the Court noted the default of the Defendant. On October 3, 2014, the Plaintiff moved for a default judgment pursuant to Federal Rule of Civil Procedure 55(b)(2).

On October 6, 2014, the Court referred this matter to United States Magistrate Judge Steven I. Locke for a recommendation as to whether the motion for a default judgment should be granted, and if so, whether damages should be awarded, including reasonable attorneys' fees and costs.

On March 12, 2015, Judge Locke issued a Report recommending that the motion for a default judgment be denied and no award of damages issue at this time. Judge Locke found that the Plaintiff did not perform under the contract or that the Defendant breached it.

More than fourteen days have elapsed since service of the March 12, 2015 Report and Recommendation on the Plaintiff, which has failed to file an objection.

Pursuant to 28 U.S.C. § 636(b) and Federal Rule of Civil Procedure 72, this Court has reviewed the March 12, 2015 Report and Recommendation for clear error, and finding none, now concurs in both its reasoning and its result.

Accordingly, the March 12, 2015 Report and Recommendation is adopted in its entirety, and the Plaintiff's motion for a default judgment is denied.

SO ORDERED.

Dated: Central Islip, New York
March 28, 2015

Arthur D. Spatt
ARTHUR D. SPATT
United States District Judge